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Human rights questions: implementation of human rights instruments

Report of the Third Committee

Rapporteur: Mr. Carlos Enrique **García González** (El Salvador)

I. Introduction

1. At its 2nd plenary meeting, on 17 September 2004, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its fifty-ninth session under the item entitled "Human rights questions", the sub-item entitled "Implementation of human rights instruments" and to allocate it to the Third Committee.

2. The Committee held a general discussion on the sub-item jointly with sub-item 105 (d) at its 23rd, 24th and 26th meetings, on 25, 26 and 27 October 2004, and took action on sub-item (a) at its 34th, 37th, 41st, 44th, 46th and 47th meetings, on 2, 4, 9, 16 and 18 November 2004. An account of the Committee's discussion is contained in the relevant summary records (A/C.3/59/SR.23, 24, 26, 34, 37, 41, 44, 46 and 47).

3. For the documents before the Committee under this sub-item, see A/59/503.

4. At the 23rd meeting, on 25 October, the Director of the New York office of the High Commissioner for Human Rights addressed the Committee (see A/C.3/59/SR.23).

5. At the 26th meeting, on 27 October, the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment made an introductory statement. The Committee then engaged in a question-and-answer session with the Special Rapporteur in which the representatives of the Netherlands (on behalf of the European Union), Switzerland, Canada, Yemen, New Zealand, the United States of America, the Russian Federation, Norway, the Republic of Korea, Costa Rica and Cuba took part (see A/C.3/59/SR.26).

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II. Consideration of proposals

A. Draft resolution A/C.3/59/L.31

6. At the 34th meeting, on 2 November, the representative of Mexico, on behalf of Argentina, Azerbaijan, Colombia, Cuba, Ecuador, Egypt, El Salvador, Guatemala, Indonesia, Mexico, Nicaragua, the Niger, Paraguay, Peru, the Philippines, Senegal, Timor-Leste and Uruguay, introduced a draft resolution (A/C.3/59/L.31) entitled "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families".

7. At the 44th meeting, on 16 November, the Committee had before it a statement of the programme budget implications of draft resolution A/C.3/59/L.31, submitted by the Secretary-General in accordance with rule 153 of the rules of procedure of the General Assembly (A/C.3/59/L.63).

8. At the same meeting, the representative of Mexico orally revised the draft resolution as follows:

(a) In the third preambular paragraph, the word "Convention" was replaced by the words "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families";

(b) In the fifth preambular paragraph, the words "as well as the International Organization for Migration" were added at the end of the paragraph;

(c) In operative paragraph 1, the words "Welcomes the signature or ratification of or accession to the International Convention on the Protection of the Rights of All Migrant Workers and Their Families by additional States" were replaced by the words "Welcomes the increasing number of signatures, ratifications or accessions to the Convention, calls upon States parties to undertake the necessary measures for the implementation of the Convention";

(d) In operative paragraph 4, the words "on the Protection of the Rights of All Migrant Workers and Members of Their Families, making an efficient use of available resources" were added at the end of the paragraph;

(e) In operative paragraph 6, the words "of other human rights committees to improve their methods of work and to avoid any duplication" were replaced by the words "by the other human rights treaty bodies and the Secretary-General aimed at improving the effectiveness of the treaty body system";

(f) In operative paragraph 12, the words "and on the implementation of the present resolution" were inserted after the words "status of the Convention".

9. At the same meeting, Bangladesh, Burkina Faso, Cape Verde, Chile, Ghana, Grenada, Guinea, Guinea-Bissau, Mali, Morocco, Mozambique, Sri Lanka, the Sudan, Tunisia and Yemen joined in sponsoring the draft resolution, as orally revised.

10. Also at its 44th meeting, the Committee adopted draft resolution A/C.3/59/L.31, as orally revised, without a vote (see para. 20, draft resolution I).

B. Draft resolution A/C.3/59/L.32

11. At the 41st meeting, on 10 November, the representative of Cuba, on behalf of Algeria, Angola, Azerbaijan, Bangladesh, Belarus, Cameroon, China, the Congo, Côte d'Ivoire, Cuba, the Democratic People's Republic of Korea, the Democratic Republic of the Congo, Egypt, El Salvador, Eritrea, Ethiopia, Guinea-Bissau, Iran (Islamic Republic of), the Lao People's Democratic Republic, the Libyan Arab Jamahiriya, Mauritania, Myanmar, Namibia, Nicaragua, Nigeria, Pakistan, Qatar, the Russian Federation, Rwanda, Saudi Arabia, South Africa, the Sudan, the Syrian Arab Republic, Togo, Tunisia, the United Republic of Tanzania, Viet Nam, Zambia and Zimbabwe, introduced a draft resolution (A/C.3/59/L.32) entitled "Equitable geographical distribution in the membership of the human rights treaty bodies". Subsequently, Benin, Botswana, the Dominican Republic, India, Indonesia, Kenya, Lesotho, Madagascar, Malawi, Mali, Mozambique, Nepal, the Niger, Sierra Leone, Sri Lanka, Suriname and Venezuela (Bolivarian Republic of) joined in sponsoring the draft resolution.

12. At the 47th meeting, on 18 November, the representative of Cuba made a statement with respect to the draft resolution (see A/C.3/59/SR.47).

13. At the same meeting, the Committee adopted draft resolution A/C.3/59/L.32 by a recorded vote of 112 to 51, with 5 abstentions (see para. 20, draft resolution II). The voting was as follows:[1]

In favour:

Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bhutan, Botswana, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Democratic Republic of the Congo, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Grenada, Guatemala, Guinea-Bissau, Guyana, Haiti, India, Indonesia, Iran (Islamic Republic of), Jamaica, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Peru, Philippines, Qatar, Russian Federation, Rwanda, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Senegal, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Tajikistan, Thailand, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Turkmenistan, Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe.

Against:

Albania, Andorra, Armenia, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Chile, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary,

[1] The representatives of Mali and Papua New Guinea subsequently stated that, had they been present during the voting, they would have voted in favour of the draft resolution.

Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining:

Bolivia, Brazil, Honduras, Paraguay, Ukraine.

14. Before the vote, the representative of the Netherlands made a statement on behalf of the European Union (see A/C.3/59/SR.47).

C. Draft resolution A/C.3/59/L.33 and Rev.1

15. At the 37th meeting, on 4 November, the representative of Denmark, on behalf of Andorra, Argentina, Australia, Austria, Belgium, Bulgaria, Chile, Costa Rica, Croatia, Cyprus, the Czech Republic, the Democratic Republic of the Congo, Denmark, Ecuador, El Salvador, Estonia, Finland, Germany, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Luxembourg, Mexico, the Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Poland, Portugal, the Republic of Korea, Romania, San Marino, Senegal, Serbia and Montenegro, Slovakia, Slovenia, South Africa, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Timor-Leste, Turkey, Ukraine, the United Kingdom of Great Britain and Northern Ireland, Uruguay and Venezuela (Bolivarian Republic of), introduced a draft resolution (A/C.3/59/L.33) entitled "Torture and other cruel, inhuman or degrading treatment or punishment". Subsequently, Bolivia, Bosnia and Herzegovina, the Dominican Republic, Mauritius, Mozambique and Namibia joined in sponsoring the draft resolution, which read as follows:

The General Assembly,

Recalling that the prohibition of torture is a peremptory norm of international law and that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right that must be protected under all circumstances, including in times of internal or international disturbance or armed conflict, and that the prohibition of torture is explicitly affirmed in all relevant international instruments,

Recalling also the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Recalling further the recommendation contained in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993 that high priority be given to providing the necessary resources to assist victims of torture and effective remedies for their physical, psychological and social rehabilitation, inter alia, through additional contributions to the United Nations Voluntary Fund for Victims of Torture, and noting with satisfaction the existence of a considerable international network of centres for the rehabilitation of victims of torture,

Commending the persistent efforts by non-governmental organizations to combat torture and to alleviate the suffering of victims of torture,

1. *Condemns* all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to give full effect to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

2. *Condemns in particular* any action or attempt by States or public officials to legalize or authorize torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions, and calls upon Governments to eliminate any practices of torture and other cruel, inhuman or degrading treatment or punishment;

3. *Urges* Governments to take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment, including their gender-based manifestations;

4. *Stresses* that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and takes note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture;

5. *Stresses* that all acts of torture must be made offences under domestic criminal law, and emphasizes that acts of torture are serious violations of international humanitarian law and can constitute crimes against humanity and war crimes and that the perpetrators of all acts of torture must be prosecuted and punished;

6. *Stresses also* that States must not punish personnel who are involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

7. *Emphasizes* that States must not expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture and other cruel, inhuman or degrading treatment or punishment;

8. *Stresses* that national legal systems must ensure that victims of torture and cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social and medical rehabilitation, urges Governments to take effective measures to this end, and in this regard encourages the development of rehabilitation centres;

9. *Calls upon* all Governments to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export and use of equipment that is specifically designed to inflict torture or other cruel, inhuman or degrading treatment;

10. *Notes with appreciation* that one hundred and thirty-six States have become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and urges all States that have not yet done so to become parties to the Convention as a matter of priority;

11. *Invites* all States parties to the Convention that have not yet done so to consider making the declarations provided for in articles 21 and 22 of the Convention and to consider the possibility of withdrawing their reservations to article 20, and urges all States parties to the Convention to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 of the Convention as soon as possible;

12. *Urges* States parties to comply strictly with their obligations under the Convention, including, in view of the high number of reports not submitted, their obligation to submit reports in accordance with article 19 of the Convention, and invites States parties to incorporate a gender perspective and information concerning children and juveniles when submitting reports to the Committee against Torture;

13. *Calls upon* States parties to consider as a matter of priority signing and ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in its resolution 57/199 of 18 December 2002, which provides further measures for use in the fight against and prevention of torture, and notes in this context that ratifications by twenty States parties are required for the Optional Protocol to enter into force;

14. *Welcomes* the work of the Committee against Torture and the report of the Committee, submitted in accordance with article 24 of the Convention;

15. *Calls upon* the United Nations High Commissioner for Human Rights, in conformity with her mandate established by the General Assembly in its resolution 48/141 of 20 December 1993, to continue to provide, at the request of Governments, advisory services for the preparation of national reports to the Committee and for the prevention of torture, as well as technical assistance in the development, production and distribution of teaching material for this purpose;

16. *Urges* States parties to take fully into account the conclusions and recommendations made by the Committee after its consideration of their reports;

17. *Welcomes* the interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture, describing the overall trends and developments with regard to his mandate, and encourages the Special Rapporteur to continue to include in his recommendations proposals on the prevention and investigation of torture, including their gender-based manifestations, and to consider including information on the

follow-up by Governments to his recommendations, visits and communications, including progress made and problems encountered;

18. *Calls upon* all Governments to cooperate with and assist the Special Rapporteur in the performance of his task, to supply all necessary information requested by the Special Rapporteur, to respond appropriately and expeditiously to his urgent appeals and to give serious consideration to responding favourably to requests by the Special Rapporteur to visit their countries, and urges them to enter into a constructive dialogue with the Special Rapporteur with respect to the follow-up to his recommendations;

19. *Stresses* the need for the continued regular exchange of views among the Committee, the Special Rapporteur and other relevant United Nations mechanisms and bodies, as well as for the pursuance of cooperation with relevant United Nations programmes, notably the United Nations Crime Prevention and Criminal Justice Programme, with a view to enhancing further their effectiveness and cooperation on issues relating to torture, inter alia, by improving their coordination;

20. *Expresses its gratitude and appreciation* to the Governments, organizations and individuals that have already contributed to the United Nations Voluntary Fund for Victims of Torture;

21. *Stresses* the importance of the work of the Board of Trustees of the Fund, and appeals to all Governments and organizations to contribute annually to the Fund, preferably by 1 March before the annual meeting of the Board, if possible with a substantial increase in the level of contributions;

22. *Requests* the Secretary-General to transmit to all Governments the appeals of the General Assembly for contributions to the Fund, to continue to include the Fund on an annual basis among the programmes for which funds are pledged at the United Nations Pledging Conference for Development Activities and to assist the Board of Trustees of the Fund in its appeal for contributions and in its efforts to make better known the existence of the Fund;

23. *Also requests* the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of adequate staff and facilities for the bodies and mechanisms involved in combating torture and assisting victims of torture, commensurate with the strong support expressed by Member States for combating torture and assisting victims of torture;

24. *Further requests* the Secretary-General to submit to the Commission on Human Rights at its sixty-first session and to the General Assembly at its sixtieth session a report on the status of the Convention and a report on the operations of the Fund;

25. *Calls upon* all Governments, the Office of the United Nations High Commissioner for Human Rights and other United Nations bodies and agencies, as well as relevant intergovernmental and non-governmental organizations, to commemorate, on 26 June, the United Nations International Day in Support of Victims of Torture;

26. *Decides* to consider at its sixtieth session the reports of the Secretary-General, including the report on the United Nations Voluntary Fund for Victims of Torture, the report of the Committee against Torture and the

interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture.

16. At its 46th meeting, on 18 November, the Committee had before it a revised draft resolution, (A/C.3/59/L.33/Rev.1) submitted by the sponsors of draft resolution A/C.3/59/L.33 and Brazil, Canada, France, Lithuania, Malta, Nigeria, Spain and the United States of America. Subsequently, Albania, Angola, Armenia, Bangladesh, Belarus, Benin, Burkina Faso, the Congo, Egypt, Eritrea, Georgia, Ghana, Grenada, Iraq, Japan, Jordan, Kenya, Kyrgyzstan Mali, Micronesia (Federated States of), Monaco, Mongolia, the Níger and the Republic of Moldova joined in sponsoring the revised draft resolution.

17. At the same meeting, the Secretary read out a statement regarding financial provisions relating to the revised draft resolution (see A/C.3/59/SR.46).

18. Also at the 46th meeting, the representative of Denmark made a statement with respect to the revised draft resolution (see A/C.3/59/SR.46).

19. At the same meeting, the Committee adopted draft resolution A/C.3/59/L.33/Rev.1 without a vote (see para. 20, draft resolution III).

III. Recommendations of the Third Committee

20. The Third Committee recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The General Assembly,

Guided by the basic instruments regarding the international protection of human rights, in particular the Universal Declaration of Human Rights[1] and other relevant human rights instruments, and reaffirming the obligation of States to promote and protect human rights and fundamental freedoms,

Recalling its resolution 45/158 of 18 December 1990, by which it adopted and opened for signature, ratification and accession the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

Recalling also the entry into force of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on 1 July 2003,

Considering that in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993,[2] all States are urged to guarantee the protection of the human rights of all migrant workers and their families and are invited to consider the possibility of signing and ratifying the Convention at the earliest possible time,

Bearing in mind the principles and norms established within the framework of the International Labour Organization and the importance of the work done in connection with migrant workers and members of their families in other specialized agencies and in various organs of the United Nations, as well as in the International Organization for Migration,

Conscious of the marked increase in migratory movements that has occurred, especially in certain parts of the world,

Deeply concerned at the manifestations of violence, racism, racial discrimination, xenophobia and other forms of intolerance and inhuman and degrading treatment directed against migrants in various parts of the world,

Recognizing the urgent need to make further efforts worldwide to improve the situation and to guarantee respect for the human rights and dignity of all migrant workers and members of their families, and aware of the important contribution of the Convention in this regard,

1. *Welcomes* the increasing number of signatures, ratifications or accessions to the Convention on the Protection of the Rights of all Migrant Workers and Their Families, calls upon States parties to undertake the necessary measures for the

[1] Resolution 217 A (III).

[2] A/CONF.157/24 (Part I), chap. III.

implementation of the Convention, and takes note of the report of the Secretary-General on the status of the Convention;[3]

2. *Calls upon* all Member States that have not yet done so to consider urgently signing and ratifying or acceding to the Convention, with the aim of achieving a broader participation by Member States in the Convention;

3. *Welcomes* the establishment of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as the report of its first session,[4] which took place from 1 to 5 March 2004, and takes note of the rules of procedure[5] adopted by the Committee;

4. *Requests* the Secretary-General to continue providing all the necessary facilities and assistance for the effective functioning of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, making efficient use of available resources;

5. *Invites* the Committee to take into account the work done by other human rights treaty bodies and special procedures of the Commission on Human Rights to protect and promote the human rights of migrant workers, as well as the work of other international forums and other parts of the United Nations system in addressing issues of international migration;

6. *Also invites* the Committee to take into account the efforts by the other human rights treaty bodies and the Secretary-General aimed at improving the effectiveness of the treaty body system;

7. *Calls upon* States parties to the Convention to submit in due time their first periodic report, as requested in article 73 of the Convention;

8. *Invites* States parties to the Convention to consider making the declarations foreseen in articles 76 and 77 of the Convention;

9. *Requests* the Secretary-General to provide all the facilities and assistance necessary for the active promotion of the Convention through the programme of advisory services and technical cooperation in the field of human rights;

10. *Welcomes* the increasing activities undertaken by the organizations and bodies of the United Nations system and intergovernmental and non-governmental organizations to disseminate information on and promote understanding of the importance of the Convention, and invites them to intensify further their efforts in this regard;

11. *Also welcomes* the work of the Special Rapporteur of the Commission on Human Rights on the human rights of migrants in relation to the Convention, and encourages her to persevere in her efforts;

12. *Requests* the Secretary-General to submit an updated report on the status of the Convention and on the implementation of the present resolution to the General Assembly at its sixty-first session.

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[3] A/59/328.

[4] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 48* (A/59/48).

[5] Ibid., annex IV.

Draft resolution II
Equitable geographical distribution in the membership of the human rights treaty bodies

The General Assembly,

Recalling its resolution 56/146 of 19 December 2001,

Reaffirming the importance of the goal of universal ratification of the United Nations human rights instruments,

Welcoming the significant increase in the number of ratifications of United Nations human rights instruments, which has especially contributed to their universality,

Reiterating the importance of the effective functioning of treaty bodies established pursuant to United Nations human rights instruments for the full and effective implementation of those instruments,

Recalling that, with regard to the election of the members of the human rights treaty bodies, the Commission on Human Rights and the General Assembly have recognized the importance of giving consideration in their membership to equitable geographical distribution, gender balance and representation of the principal legal systems and of bearing in mind that the members shall be elected and shall serve in their personal capacity, and shall be of high moral character, acknowledged impartiality and recognized competence in the field of human rights,

Reaffirming the significance of national and regional particularities and various historical, cultural and religious backgrounds, as well as of different political, economic and legal systems,

Recognizing that the United Nations pursues multilingualism as a means of promoting, protecting and preserving diversity of languages and cultures globally and that genuine multilingualism promotes unity in diversity and international understanding,

Recalling also that the Commission on Human Rights and the General Assembly have encouraged States parties to United Nations human rights treaties, individually and through meetings of States parties, to consider how to give better effect, inter alia, to the principle of equitable geographical distribution in the membership of treaty bodies,

Expressing concern at the regional imbalance in the current composition of the membership of some of the human rights treaty bodies,

Noting in particular that the status quo tends to be particularly detrimental to the election of experts from some regional groups,

Convinced that the goal of equitable geographical distribution in the membership of human rights treaty bodies is perfectly compatible and can be fully realized and achieved in harmony with the need to ensure gender balance and the representation of the principal legal systems in those bodies and the high moral character, acknowledged impartiality and recognized competence in the field of human rights of their members,

1. *Encourages* States parties to the United Nations human rights instruments to adopt concrete actions, inter alia, the possible establishment of quota distribution systems by geographical region for the election of the members of the treaty bodies, thereby ensuring the paramount objective of equitable geographical distribution in the membership of those human rights bodies;

2. *Calls upon* the States parties to the United Nations human rights instruments to include, as an agenda item at their forthcoming meetings, a debate on ways and means to ensure equitable geographical distribution in the membership of the human rights treaty bodies, based on the recommendations of the Commission on Human Rights and the Economic and Social Council and the provisions of the present resolution;

3. *Recommends*, when considering the possible establishment of a quota by regions for the election of membership of each treaty body, the introduction of flexible procedures that encompass the following criteria:

(a) Each of the five regional groups established by the General Assembly must be assigned a quota of the membership of each treaty body in equivalent proportion to the number of States parties to the instrument that it represents;

(b) There must be provision for periodic revisions that reflect the relative changes in the geographical distribution of States parties;

(c) Automatic periodic revisions should be envisaged in order to avoid amending the text of the instrument when the quotas are revised.

4. *Stresses* that the process needed to achieve the goal of equitable geographical distribution in the membership of human rights treaty bodies can contribute to raising awareness of the importance of gender balance, the representation of the principal legal systems and the principle that the members of the treaty bodies shall be elected and shall serve in their personal capacity, and shall be of high moral character, acknowledged impartiality and recognized competence in the field of human rights;

5. *Requests* the chairpersons of the human rights treaty bodies to consider at their next meeting the content of the present resolution and to submit, through the United Nations High Commissioner for Human Rights, specific recommendations for the achievement of the goal of equitable geographical distribution in the membership of the human rights treaty bodies;

6. *Requests* the United Nations High Commissioner for Human Rights to submit concrete recommendations on the implementation of the present resolution to the General Assembly at its sixtieth session;

7. *Decides* to continue its consideration of this question at its sixtieth session under the item entitled "Human rights questions: implementation of human rights instruments".

Draft resolution III
Torture and other cruel, inhuman or degrading treatment or punishment

The General Assembly,

Recalling that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right that must be protected under all circumstances, including in times of internal or international disturbance or armed conflict, and that the prohibition of torture is explicitly affirmed in all relevant international instruments,

Recalling also that a number of international, regional and domestic courts, including the International Tribunal for the Former Yugoslavia, have recognized that the prohibition of torture is a peremptory norm of international law,

Recalling further the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[1]

Recalling the recommendation contained in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993[2] that high priority be given to providing the necessary resources to assist victims of torture and effective remedies for their physical, psychological and social rehabilitation, inter alia, through additional contributions to the United Nations Voluntary Fund for Victims of Torture, and noting with satisfaction the existence of a considerable international network of centres for the rehabilitation of victims of torture,

Commending the persistent efforts by non-governmental organizations to combat torture and to alleviate the suffering of victims of torture,

1. *Condemns* all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

2. *Condemns in particular* any action or attempt by States or public officials to legalize or authorize torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions, and calls upon Governments to eliminate any practices of torture and other cruel, inhuman or degrading treatment or punishment;

3. *Urges* Governments to take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment, including their gender-based manifestations;

4. *Stresses* that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including

[1] Resolution 39/46, annex.

[2] A/CONF.157/24 (Part I), chap. III.

the officials in charge of the place of detention where the prohibited act is found to have been committed, and takes note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles)[3] as a useful tool in efforts to combat torture;

5. *Stresses* that all acts of torture must be made offences under domestic criminal law, and emphasizes that acts of torture are serious violations of international humanitarian law and can constitute crimes against humanity and war crimes and that the perpetrators of all acts of torture must be prosecuted and punished;

6. *Urges* States to ensure that any statement that is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;

7. *Stresses* that States must not punish personnel who are involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

8. *Recalls* that States shall not expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture;

9. *Stresses* that national legal systems must ensure that victims of torture and cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social and medical rehabilitation, urges Governments to take effective measures to this end, and in this regard encourages the development of rehabilitation centres;

10. *Calls upon* all Governments to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export and use of equipment that is specifically designed to inflict torture or other cruel, inhuman or degrading treatment;

11. *Notes with appreciation* that one hundred and thirty-eight States have become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[1] and urges all States that have not yet done so to become parties to the Convention as a matter of priority;

12. *Invites* all States parties to the Convention that have not yet done so to consider making the declarations provided for in articles 21 and 22 of the Convention and to consider the possibility of withdrawing their reservations to article 20, and urges all States parties to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 of the Convention as soon as possible;

13. *Urges* States parties to comply strictly with their obligations under the Convention, including, in view of the high number of reports not submitted, their obligation to submit reports in accordance with article 19 of the Convention, and invites States parties to incorporate a gender perspective and information concerning children and juveniles when submitting reports to the Committee against Torture;

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[3] Resolution 55/89, annex.

14. *Calls upon* States parties to give early consideration to signing and ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted on 18 December 2002 by the General Assembly in its resolution 57/199 and which provides further measures for use in the fight against and prevention of torture, and notes in this context that ratifications by twenty States parties are required for the Optional Protocol to enter into force;

15. *Welcomes* the work of the Committee against Torture and the report of the Committee,[4] submitted in accordance with article 24 of the Convention;

16. *Calls upon* the United Nations High Commissioner for Human Rights, in conformity with her mandate established by the General Assembly in its resolution 48/141 of 20 December 1993, to continue to provide, at the request of Governments, advisory services for the preparation of national reports to the Committee and for the prevention of torture, as well as technical assistance in the development, production and distribution of teaching material for this purpose;

17. *Urges* States parties to take fully into account the conclusions and recommendations made by the Committee after its consideration of their reports;

18. *Notes with appreciation* the interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture[5] on the overall trends and developments with regard to his mandate, and encourages the Special Rapporteur to continue to include in his recommendations proposals on the prevention and investigation of torture, including their gender-based manifestations;

19. *Requests* the Special Rapporteur to continue to consider including in his report information on the follow-up by Governments to his recommendations, visits and communications, including progress made and problems encountered;

20. *Calls upon* all Governments to cooperate with and assist the Special Rapporteur in the performance of his task, to supply all necessary information requested by the Special Rapporteur, to respond appropriately and expeditiously to his urgent appeals and to give serious consideration to responding favourably to requests by the Special Rapporteur to visit their countries, and urges them to enter into a constructive dialogue with the Special Rapporteur with respect to the follow-up to his recommendations;

21. *Stresses* the need for the continued regular exchange of views among the Committee, the Special Rapporteur and other relevant United Nations mechanisms and bodies, as well as for the pursuance of cooperation with relevant United Nations programmes, notably the United Nations Crime Prevention and Criminal Justice Programme, with a view to enhancing further their effectiveness and cooperation on issues relating to torture, inter alia, by improving their coordination;

22. *Expresses* its gratitude and appreciation to the Governments, organizations and individuals that have already contributed to the United Nations Voluntary Fund for Victims of Torture;[6]

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[4] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 44* (A/59/44).

[5] A/59/324.

[6] See A/58/284; see also A/59/353.

23. *Stresses* the importance of the work of the Board of Trustees of the Fund, and appeals to all Governments and organizations to contribute annually to the Fund, preferably by 1 March before the annual meeting of the Board, if possible with a substantial increase in the level of contributions;

24. *Requests* the Secretary-General to transmit to all Governments the appeals of the General Assembly for contributions to the Fund, to continue to include the Fund on an annual basis among the programmes for which funds are pledged at the United Nations Pledging Conference for Development Activities and to assist the Board of Trustees of the Fund in its appeal for contributions and in its efforts to make better known the existence of the Fund;

25. *Also requests* the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of adequate staff and facilities for the bodies and mechanisms involved in combating torture and assisting victims of torture, commensurate with the strong support expressed by Member States for combating torture and assisting victims of torture;

26. *Further requests* the Secretary-General to submit to the Commission on Human Rights at its sixty-first session and to the General Assembly at its sixtieth session a report on the status of the Convention and a report on the operations of the Fund;

27. *Calls upon* all Governments, the Office of the United Nations High Commissioner for Human Rights and other United Nations bodies and agencies, as well as relevant intergovernmental and non-governmental organizations, to commemorate, on 26 June, the United Nations International Day in Support of Victims of Torture;

28. *Decides* to consider at its sixtieth session the reports of the Secretary-General, including the report on the United Nations Voluntary Fund for Victims of Torture, the report of the Committee against Torture and the interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture.